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Before The
Federal Communications Commission
Washington D.C. 20554

In the Matter of	)	
	)	MM Docket No. 00-10
Establishment of a Class A	)	MM Docket No. 99-292
Television Service	)	RM-9260

To: The Commission

COMMENTS OF KM BROADCASTING, INC.

Robert E. Kelly ("REK", whose Consolidated Petition for Review for Low Power Television authorizations on Channels 61 and 63 in Annapolis, Maryland, is currently pending before the Federal Communications Commission ("FCC" or "Commission") hereby submits its Comments with respect to the above-referenced proceeding.[1] Specifically, REK submits its comments with respect to the Commission's proposal to establish a Class A television service for the Low Power Television ("LPTV") Service based on the provisions of recently-enacted Federal legislation requiring the adoption of Class A television rules.[2] Generally, REK believes that the Commission has a remarkable opportunity to benefit the LPTV

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[1] Comments were required to be filed on February 10, 2000. Consequently, the REK Comments are timely filed.

[2] See the Community Broadcasters Protection Act of 1999 ("CBPA"), Section 5008 of Pub. L.. No. 106-113, 113 Stat. 1501 (1999), Appendix I, codified at 47 U.S.C. §336(f).

industry through this proceeding, and should, within the statutory framework of the CBPA, do everything in its power to ensure the ability of the LPTV industry to survive the DTV process. With that in mind, the Commission should take as liberal a view as possible in adopting Class A rules, and not adhere to the more rigid view exhibited in some areas of the Order and Notice of Proposed Rulemaking (FCC 00-16, released January 13, 2000)("NPRM")released by the FCC to initiate this proceeding. Specifically, the FCC should provide as much latitude as possible with respect to the filing schedule for Class licenses beyond the thirty-day period suggested in the legislation. The FCC should also adopt a liberal approach in requiring LPTV stations to meet Part 73 standards applicable to full power stations. The Commission should make clear how it will proceed with the licensing of LPTV licensees currently operating on channels 52-69. It should also allow those LPTV licensees with DTV displacement applications and/or construction permits to qualify for Class A status on the displacement channel. finally, Class A licenses should be issued under Part 73, not Part 74, since such licensees would have to conform with Part 73 of the rules in order to obtain the Class A licenses in the first place. In support whereof, the following is submitted.

I. The FCC Should Adopt a Liberal Approach

As a general proposition, REK urges the FCC to adopt as liberal an interpretation of the CBPA as possible in implementing Class A rules. The purpose of the CBPA, after all, is to preserve the industry, not force it to comply with requirements that might destroy it, or otherwise require it to make difficult and expensive operational changes in a very short period of time. Particularly, REK urges the FCC to interpret the language of the CBPA with respect to time frames for the implementing of rules and the licensing of Class A stations as liberally as possible. REK believes that many, if not most, of the LPTV stations that have met the three criteria to qualify for Class A status may not be able, at this time, to meet the general operational criteria established in Part 73 of the Commission's rules. To establish a conversion process from Part 74 to Part 73 in a very short period of time will have an extremely deleterious effect on many stations and may in fact prevent some stations from seeking Class A status altogether. This negative result should be avoided at all costs, and will be avoided if the FCC takes reasoned approach to the Class A licensing process and affords stations great leeway in establishing the period for filing Class A license applications.

II. FCC Must Allow Class A Applications to be Filed Over a Lengthy Period of Time

The NPRM at ¶9 states that

> One issue not addressed by the statute is whether LPTV stations must apply for a Class A license within the time frame established in the legislation, or whether the Commission may continue to accept and approve applications from qualifying LPTV stations to convert to Class A status in the future.

REK would urge that the Commission must determine that it may continue to accept and approve applications from qualifying LPTV stations to convert to Class A status in the future. REK believes this approach is permitted by the language in several areas of the CBPA.

For instance, the CBPA states that

> (C) APPLICATION FOR AND AWARD OF LICENSES- Consistent with the requirements set forth in paragraph (2)(A) of this subsection, a licensee may submit an application for class A designation under this paragraph within 30 days after final regulations are adopted pursuant to subparagraph (A) of this paragraph. Except as provided in paragraphs (6) and (7), the Commission shall, within 30 days after receipt of an application of a licensee of a qualifying low-power television station that is acceptable for filing, award such a class A television station license to such licensee.

The CBPA clearly provides that an LPTV licensee may, not shall, apply for a Class A license within 30 days of the adoption of the Class A rules. This cannot be read to mean that this is the only period of time in which the FCC is authorized to accept Class A applications.

This interpretation is clear based on the CBPA provisions with respect to out-of-core channels. The CBPA provides that

> (6) INTERIM QUALIFICATION-`(A) STATIONS OPERATING WITHIN CERTAIN BANDWIDTH- The Commission may not grant a class A license to a low-power television station for operation between 698 and 806 megahertz, but the Commission shall provide to low-power television stations assigned to and temporarily operating in that bandwidth the opportunity to meet the qualification requirements for a class A license. If such a qualified applicant for a class A license is assigned a channel within the core spectrum (as such term is defined in MM Docket 87-286, February 17, 1998), the Commission shall issue a class A license simultaneously with the assignment of such channel.

Clearly, these stations are to be allowed "the opportunity" to qualify for and apply for Class A status in the future. Thus, if one class of stations is allowed to apply for Class A licenses in the future, it would be consistent and indeed reasonable to allow other types to apply in the future as well.

In addition, there is no prohibition in other areas of the legislation that limits the FCC to accepting Class A applications in this 30-day window. So the FCC's position in the NPRM that

> The CBPA further provides that licensees have 30 days after final regulations implementing the CBPA are adopted by the Commission in which to submit an application for Class A designation.
> NPRM at ¶8.

is not literally correct. The FCC has the authority and

indeed must allow qualified parties to file Class A applications in the future.

Furthermore, the CBPA provides in §2(B) that

> the Commission determines that the public interest, convenience, and necessity would be served by treating the station as a qualifying low-power television station for purposes of this section, or for other reasons determined by the Commission

Thus, the Commission has been given broad latitude under the penumbra of the public interest, convenience and necessity standard to establish Class A qualifications, including the Class A application and licensing process. The Commission should utilize this authority in this situation to create an extensive filing period for Class A license applications.

The Commission also invites commenters to discuss whether the Commission should, as a matter of policy, allow LPTV stations to apply to convert to Class A status after the application period provided for in the Act. REK would pose the question this way: What policy could possibly be articulated that would <u>prevent</u> LPTV stations from applying for Class A status in the future. Simply put, there is none. On the other hand, affording LPTV licenses a substantial amount of time to conform with Part 73 and obtain Class A licensees will have a remarkably positive effect on the public interest. Hundreds of new full-power stations (in the sense they are

primary) would be created through this process, meeting many traditional FCC goals with respect to broadcasting, such as diversity of ownership, minority ownership, diversity of voices and programming. Such a broad conversion process would also increase new employment opportunities in broadcasting. Allowing more LPTV stations to convert to Part 73, as opposed to limiting the ability of otherwise qualified stations to do so, will truly benefit the public interest as contemplated by the Communications Act of 1934, as amended.

If the Commission must put a time limit on such Class A license applications, then REK suggests the Commission tie such period to the DTV conversion process. (Full power stations have been given at least eight years to convert to digital; LPTV operators should be afforded a portion of that time to convert to Part 73.) Otherwise, if the purpose of the legislation is to preserve the LPTV industry, then there simply is no good reason not to allow LPTV licenses to apply for Class A status well into the foreseeable future.

II. Treatment of LPTV Operators Displaced by DTV Allotments

The Commission must make clear that LPTV operators who have either filed acceptable applications or have been granted permits for displacement applications on new channels due to the DTV conversion process must be able to seek Class A status

for the new, displacement channel. For example, if an LPTV operator licensed on channel 20 have been displaced by an DTV allotment, and has received a construction permit for channel 30, this operator should be allowed to seek class A status for the operation on Channel 30. Specifically, the operator in this example, assuming it is otherwise eligible, should be able to file a Class A license application as its license filing when the channel 30 modification is completed. In other words, the FCC must not limit eligibility for Class A status to the original channel in this example. (Such a rigid approach would presumably result in the denial of a Class A license altogether, since the original DTV displacement would probably trigger one of the three interference criteria in the CBPA that bars the issuance of a Class A license.)

The Commission requested comment on the treatment of LPTV channels 52-59. REK believes that any LPTV licensee located outside the core channels should be allowed to migrate to the core channels and qualify for Class A status, assuming a displacement channel were available. This is the only equitable solution for the situation in which licensees in channels 52-59 find themselves, due to the anomaly in the language of the CBPA. In fact, REK would urge that any LPTV licensee, otherwise qualified for Class A status, who finds

itself ineligible for a Class a license due to the three interference criteria in the CBPA should be allowed to migrate to a new channel and apply for a Class A license, should such alternative channel be available.

III. Class A Licenses Should be Issued Under Part 73

If Class A licensees are to comply with Part 73, then the new Class A licenses should be issued under Part 73. Simply put, Class A licensees who must conform with Part 73 should reap all of the benefits therefrom, including, but not limited to, primary status.

WHEREFORE, the foregoing premises considered, REK respectfully requests that Commission incorporate the comments of REK into any regulations formulated to govern Class A LPTV licenses, when such rules are adopted.

Respectfully submitted,

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